

Inland Steel Award No. 808

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SCHEDULING AND HOURS OF WORK

GRIEVANCE NO. 32-S-22

AWARD NO. 808

**SUMMARY:** Mobile Maintenance schedules which, as originally posted, deviate from the five-two normal work pattern required by the Contract, do not fall within the exception for cases where following the normal work pattern would regularly require the payment of overtime. The necessity to resort to split schedules only 16, 20 or 22 percent of the weeks over relatively short or longer periods does not involve "regular" overtime payments. No monetary relief is awarded.

COMPANY: INLAND STEEL CO.

PLANT: INDIANA HARBOR WORKS

DISTRICT: 31

ARBITRATOR: CLARE B. McDERMOTT

DATE OF DECISION: JUNE 12, 1990

STATEMENT OF THE GRIEVANCE

"Management is violating the 1986 C.B.A. by not following the normal work pattern beginning the week of 7-3-88 and subsequent weeks.

All affected employees (see attachment #1).

Relief Sought Cease and desist. Follow normal work pattern and pay all monies lost.

Violation is claimed of Article 3, Section 1 and Article 10, Section 1."

**BACKGROUND**

This grievance from the Mobile Maintenance Services Department of Indiana Harbor Works claims that a number of schedules for its two crews violated the normal work pattern required by Article 10, Section 1-d(1) of the August 1, 1986 Agreement.

Prior to August of 1986 maintenance work at this plant was done by either of two sets of forces, a Central Maintenance Shops Department, with maintenance employees deployed where needed throughout the plant, or by Assigned Maintenance employees, always working at a given operating department.

In their negotiations for the 1986 Agreement the parties recognized the need to improve efficiency and productivity, while assuring employment security for assigned maintenance employees. They thus agreed to establish a new department, to be called Mobile Maintenance Department, in order to supplement mechanical, electrical, and welding maintenance work associated with scheduled repair downturns in the various operating departments and to minimize use of outside maintenance forces. The Mobile Maintenance Services employees were to be a pool of maintenance employees who would travel from mill to mill as shutdown schedules called for them in order to augment Assigned Maintenance employees there in the repair of department equipment.

Mobile Maintenance Section Manager Misiara explained that the basic philosophy of this new system, as received from Japan, was that the plant would have minimum assigned maintenance forces and, on scheduled downturns in the operating departments, would bring in an ample force of his maintenance employees to do all or much of the routine and major maintenance that can be done during a downturn. A result of that was to reduce the number of assigned maintenance employees because, while they, too, worked during the downturns, there were more of them thereafter than were needed during ordinary, running turns. The goal thus was to reduce assigned maintenance forces and increase Mobile Maintenance Services forces so that they could supplement the former group on downturn work, as needed. An example would be, with the 80" Hot Strip Mill on a scheduled, three-turn shutdown on Wednesday, Mobile Maintenance Services would assign whatever number of maintenance employees to it that were needed, and then they would be working elsewhere on the next day. This is said to be a more efficient use of manpower, since it allegedly uses all the available downtime for as much or all maintenance as might be required. Moreover, it is said that it allows the fewer Assigned Maintenance employees that are left to concentrate more on inspection, preventive maintenance, and routine work that can be done while the mill is operating.

Misiara showed the increase in Mobile Maintenance Services forces from 22 Mechanics and 5 Electricians in his force in March of 1986 to 143 Mechanics and 43 Electricians in mid-1989, plus a Fitting and Repair

Section, a Cylinder Repair Section, and a separate division of Plant General Electricians. Some of that growth came from Assigned Maintenance employees, and a further decrease in Assigned Maintenance forces has come by unreplaced attrition. About 210 Mobile Maintenance Services employees thus are scheduled for downturn maintenance in approximately 20 different operating departments on different days. The Mobile Maintenance Services Department does not maintain a shop for small-item repairs, as some other operating-department maintenance forces do. Thus, there is no "project" work for them to do in the event that planned work unexpectedly becomes unavailable.

The Mobile Maintenance Services forces are scheduled in two crews. A Crew ordinarily is assigned Sunday to Thursday, and B Crew normally is assigned Monday to Friday. Thus, each is scheduled and works five consecutive days on those normal schedules.

It is not disputed that Mobile Maintenance Services employees' work is associated almost exclusively with downturns in the various operating departments. These include both planned, scheduled downturns and those that result from unplanned, emergency breakdowns. Both kinds of downturns are, of course, determined by the operating departments, and Mobile Maintenance Services must schedule its employees in response to those events that it does not control but which are initiated by other departments. It is also not disputed that there is little, if any, make-up work for Mobile Maintenance Services employees to do on their own when not assigned to operating-department downturn work.

Misiora and his Planners get the downturn-scheduling information set by the operating departments on Thursday from Operations Planning, and they then schedule Mobile Maintenance Services forces for the following week, beginning on Sunday. When a given mill schedules an extended downturn, as the 80" Mill does every two months, more downtime is faced than the ordinary Wednesday downturn on that equipment. An extended downturn at the 80" goes up to six turns or even nine. That mill usually has a six-turn extended downturn every two months, and then a nine-turn downturn for the next one two months later. For Mobile Maintenance Services to accommodate to such an extended downturn, it is said that it must schedule toward the end of a week for Friday and Saturday work for a six-turn extended downturn and on Sunday, too, for a nine-turn downturn. The ordinary downturn on that Mill is three turns. Misiora said also that an extended downturn ordinarily will affect more than one week's Mobile Maintenance Services schedule and usually will affect those for three weeks.

Misiora explained that for a regular 80" Wednesday downturn, his Department would send about one hundred employees there. It sends four to six employees there every Wednesday to work on coils, even when it is not a downturn.

Sometimes a given operating department that has scheduled a downturn for Thursday, for example, must change that planned downturn for one of a number of reasons, such as that an operation on which it depends has had to curtail its operations, or because the given operation experiences an emergency shutdown of equipment on another day, perhaps Tuesday. That causes a ripple effect for Mobile Maintenance Services. It has scheduled its employees in expectation of their working all out on the Thursday, scheduled downturn but, with cancellation of that downturn, Mobile Maintenance Services will have a crew of its employees with not enough to do that day. The emergency downturn that now comes on Tuesday creates a different problem. Mobile Maintenance Services did not expect to have to service a downturn at that operation on Tuesday and it scheduled accordingly, that is, with fewer employees. Now it must service that Tuesday downturn and has to get the additional employees with which to do so. Moreover, when an extended downturn comes along, in place of a regular Wednesday, single-day downturn, as on the 80" Mill, Mobile Maintenance Services must assign its employees to cover that weekend work. If in those circumstances it continued to work the ordinary Sunday-Thursday, and Monday-Friday schedules, some employees still would have to work on the weekend, and that would cause a non-normal, split schedule, under which employees would not work the normal work pattern of five consecutive work days, but would work two or three workdays, split by days off, from three or two more workdays. That is, some Mobile Maintenance Services employees would be scheduled off on a weekday, for example, Monday or Wednesday, and then would work Saturday or Sunday, or both days. If they worked Sunday through Thursday or Monday through Friday, and worked the weekend days, as well, overtime would be required for the latter day or days in such weeks.

When Mobile Maintenance Services began in 1986, there were five operating departments serviced, and there were five different weeks of split schedules in less than one-half of that year. By mid-1989 43 departments were being serviced, and there were 23 split schedules in 1987, 20 in 1988, and nine in the first one-half of 1989. The Company counts 57 such split, weekly schedules in the period from July of 1986 into July of 1989, or about 16 percent of the weeks. It argues from that that Mobile Maintenance Services

Supervision clearly tries to schedule, and most often succeeds, so as to accommodate to the five-consecutive-workday requirement of the normal work pattern.

The Union notes that such split schedules depart from the normal work pattern required by Article 10-1-d(1). It stresses also that for all but 30 of the 36 weeks prior to the filing of this grievance in August of 1988, these employees were scheduled five consecutive days, with two consecutive days off, for a normal work pattern. That count excludes those weeks in which a holiday fell.

On that last point, the Union says it does not count as a prohibited departure from the normal work pattern those split-schedule weeks when (1) there was a holiday observed or (2) the split was caused by breakdowns of equipment in the operating departments. The Union then says the fact that normal work patterns were scheduled and worked in 30 of the 36 weeks just before this grievance shows that Management is able to schedule these employees on that basis. That shows also, says the Union, that schedules adhering to the normal work pattern would not "regularly" require payment of overtime, so that these violations cannot be brought within that exception in Article 10-1-d(1)(a).

The Union suggests several scheduling alternatives that allegedly would avoid these split schedules. It says Supervision could reassign these employees to other departments where downturn work will be done or to non-downturn work somewhere; it could retain them on proper, normal work-pattern schedules and pay them overtime for the sixth day, as that occasionally became necessary; or it could assign them to build a lunchroom for themselves in operating departments where they perform downturn work.

Management urges, first, that Article 3 vests in it exclusive authority to manage the plant and direct the working forces. It insists that includes the broad right to schedule the work and the force of employees necessary to perform it. That is said to be reinforced by the provision of Article 10, Section 7, saying that in the exercise of its right to determine the size and duties of crews, it shall be Company policy to schedule forces adequate for performance of the work to be done.

The Company cites arbitration decisions affirming its right to establish and to change work schedules, including the right to schedule work so that an excess of employees will not be present on days when there is not sufficient work and so that there will not be a shortage of employees on days when there is a lot of work to be done.

Management stresses that Mobile Maintenance Services Supervision does not have final say on these schedules but must arrange its schedules according to schedules and changes in them established by operating departments that are to be serviced.

The Company says that when the Union makes an assertion, as it has done here, that there are alternative procedures that would avoid use of split schedules and still would answer Management's needs, the burden of proof switches to it to establish the practicability of its suggested alternatives. The Company insists the Union has not met that burden. The first Union suggestion is said to be nonexistent. The Company says it need not stay with the normal work pattern schedules and then pay overtime, as required, under the second Union suggestion, because arbitration decisions support its right not to incur overtime when it can be avoided. The third Union suggestion is said to be too impracticable to be followed and is, moreover, within Management's sole discretion to follow or not, as it chooses. Accordingly, the Company insists there was no practical alternative available to it when some work schedules infrequently caused some Mobile Maintenance Services employees to work a nonnormal schedule.

The Company notes the 10-1-d(1)(b) permission to deviate from the normal work pattern when necessary because of breakdowns. But, the Union has conceded, as it must, that it does not allege violations as to any such schedules. It notes that the parties have not examined all nonnormal schedules to see if they were caused by breakdowns, and it asks that, in granting relief here, if any, that the Arbitrator remand the grievance to the parties so that they may analyze each nonnormal schedule so that those found to have been caused by breakdowns will not be charged as violations of 10-1-d(1).

The Company then says the Union has not shown that any employee scheduled on a nonnormal work pattern was not fully employed, that is, did not have five days of work in each such week. It argues, moreover, that there is no express contractual provision for a monetary penalty for an employee scheduled on a non-normal work pattern. Hence, says the Company, no monies were lost and thus none could be awarded.

The Union says the Company is required to schedule normal work patterns regardless of extenuating circumstances, unless they fall within the excuses of 10-1-d(1)(a), (b), or (c). The "agreement" exception of (c) is not involved here. The Union refers to an Inland arbitration decision and to several in other collective bargaining relationships in support of its arguments.

The Company notes the Union argument that Management cannot rely on these split schedules as excused because they regularly would require payment of overtime, the Union point being that the resulting overtime does not arise "regularly." Management says the point is without merit, since "regularly" is not synonymous with "constantly," or "consistently." It is said that the fact that this department is forced to schedule nonnormally only about 16 percent of the time does not mean that it is not avoiding the "regular" scheduling of overtime during those periods of nonnormal scheduling. The Company notes dictionary definitions of "regularly" as arranged or ordered according to some established rule, law, principle, or type, and as recurring or functioning at fixed or uniform intervals.

Management says the need for these nonnormal schedules arises periodically at relatively uniform intervals in response to downturn decisions made or changed by operating departments. That is said to be "regular." The Company contends that these split schedules are caused in some cases by breakdowns or by operating requirements similarly beyond the control of the Company. Accordingly, Management contends they are excused because they regularly would require overtime and because they are caused by breakdowns or other matters beyond the control of the Company, and thus fall within the exceptions allowed by 10-1-d(1). The Company estimates that the cost of the overtime that would be required if it could not use split schedules as it has done so here would be about \$150,000 per year, as a rock-bottom figure. Misióra said, moreover, that, if Mobile Maintenance Services were forced to adhere to the normal work pattern and pay overtime for situations that otherwise would be deviations, it would be contrary to the basis on which the Department was established, since it would not be cost effective because it would cause loss of operating turns. It would also force overscheduling, since there would be more employees than needed on some turns, requiring pay for unproductive time, unless work could be created. The witness said it could not be. Misióra said that the major factors in all these split schedules were planned, extended downturns on operating equipment or breakdowns.

The Union witness examined all data for 102 weeks from July of 1987 to July of 1989, and he concluded there were 23 weeks of split schedules, or 22.5 percent of the total. He excluded holiday weeks because of the Company's accommodating to the holiday, if there were two consecutive days off. His count and the Company's were not in agreement for all weeks, probably because he ignored isolated single weeks of split schedules and those in which only a relatively few employees had such schedules.

The Union says the Company position really goes so far as to say that "operation of the mill" in the various departments is a matter beyond the control of the Company, similar to breakdowns. It calls that nonsense. The only excuse left, says the Union, is the one allowing deviation from the normal work pattern when such schedules regularly would require payment of overtime. It insists adherence to normal work-pattern schedules would not "regularly" require payment of overtime, since splits were used in only 16 percent of the Company's 36 weeks and only 22.5 percent of the Union's 102 weeks. That is said to be "spasmodic" or "fluctuating" and not "regularly."

#### FINDINGS

A varying but clear minority of Mobile Maintenance Services schedules are split--do not provide five consecutive work days--and thus deviate from the 10-1-d(1) requirement of a normal work pattern. Some of those deviations occur, perhaps technically, in holiday weeks, and the Union has made it clear it does not contest those schedules here, recognizing that they provide two consecutive days off. It is clear also that some of the split schedules may have been caused by breakdowns, as excused by the 10-1-d(1)(b) exception, and the parties have not yet gone over the details of each such split schedule in order to try to determine whether there were such breakdowns and, if there were, whether they were causally related to the deviating schedule, so as to allow it to be excused. Any such schedules also are not contested here.

With those two categories of nonnormal work-pattern schedules removed from contention, there would be fewer than even the lowest count of split schedules of either party. Moreover, with those two kinds of split schedules excluded, the only exception provisions of 10-1-d(1) that remain relevant are subsections (a) (regularly would require payment of overtime) and (b) (other matters beyond control of the Company). Lastly, in setting the dispositive stage here, it must be emphasized that this is not understood as a contest about "changes" in posted schedules under 10-1-d(3). It is not a dispute, that is, about events that occur after the schedules were posted. This dispute deals solely with schedules which, as originally posted, deviate from the five-two normal work pattern required by 10-1-d(1) and with whether or not those deviations were excused as within an exception of 10-1-d(1)(a) or (b).

There is no indication in this record that problems of this nature occurred under the old Central Shops-Assigned Maintenance arrangements in existence up to mid-1986. Apparently, therefore, the tendency to

fall back on more frequent split schedules came along with the adoption from Japan of this Mobile Maintenance Section philosophy of maintaining plant equipment. Some Company expressions here appear to come very close to a claim that operating the equipment of the 43 departments serviced and maintaining it with this maintenance philosophy has become so complicated as to have gone ". . . beyond the control of the Company. . . ." as in 10-1-d(1)(b). But that cannot be embraced. Whatever the extent of expanded Management options, if any, that were granted by Appendix N to the 1986 Agreement (including paragraph AN 20), it did not include discretion to schedule employees with less careful attention to the requirements of 10-1-c and -d than was demanded, and apparently paid, before the new system.

Dealing first with the competing arguments about whether this system, if scheduled in accordance with the normal work pattern of 10-1-c, would "regularly" require the payment of overtime, it seems clear enough that that exception is not triggered by these facts. There were interesting and abstruse arguments from dictionary definitions of "regularly," some seeming to stress a sense of predictable recurrence of one event as uniformly following upon another, regardless of time elapsed between one event and the next. It was said colorfully that robins do not fly north constantly or consistently, but that they do so according to a "regular" pattern.

That is true, but something that occurs only once a year might be regular in a more cosmic sense, as would the appearance of Haley's Comet every 75 years, but that would be of little help in deciding whether these nonnormal schedules appeared "regularly" here, in the sense that that word appears in 10-1-d(1)(a). Such schedules must be posted at least 104 times each year and not just once each year or once each 75 years. The language used in this exception and the arbitral treatment it has rather uniformly received over a period of approximately 40 years shows that "regularly" is not satisfied here by necessity to resort to split schedules only 16 percent, 20 percent, or 22 percent of the weeks over relatively short or longer periods. Even if "regularly" were to be used in the sense of occurring at fixed or uniform intervals, as if arranged according to some fixed rule or principle, it would not help Management here, for there is insufficient basis for concluding that every planned downturn on operating equipment in this, that, or any department "regularly" would require overtime. If it did so, there would have been hardly any weeks scheduled on normal work patterns. And yet out of 102 there were only 23 split schedules. Thus, the necessary "regularity" is absent. Indeed, "irregular" appears more clearly to be the rule. This is not to apply a sense of "frequency," only, to the word "regularly" in 10-1-d(1)(a), but to say that there is no regular (uniform) occurrence of a nonnormal work pattern following according to some fixed principle upon any identifiable type of operating-department downturn.

The Company says that extended, planned downturns (six turns or nine turns), for example, on the 80" Mill, "regularly" (inevitably) called for nonnormal-work-pattern schedules for Mobile Maintenance Services employees in order to avoid overtime.

But, with Company testimony showing also that they have occurred every two months on the average for the last two years and one such occurrence happening on the 80" affecting three weeks of Mobile Maintenance Services schedules, there would have been approximately 36 such split schedules in those two years. That has not happened. There have been less than two-thirds that number of such splits from all occurrences. Moreover, when it is recalled that two Mobile Maintenance Services schedules are posted each week, one year's activities require 104 schedules, and two would require 208. Twenty-three such schedules, out of 208, would not appear to qualify as "regularly" on either a frequency or a uniform-response basis.

Consequently, the record does not support the argued conclusion that these relatively few nonnormal work-pattern schedules regularly would require payment of overtime under 10-1-d(1)(a). Subsection (c) never was involved. Thus, the grievance will be sustained to the extent that the nonnormal work-pattern schedules were not excused under 10-1-d(1)(a), and scheduling must return to the normal work pattern.

Another aspect of the grievance will be remanded to the parties so that they jointly may examine the details of each nonnormal work-pattern schedule in order to determine which ones, if any, were caused by reasons within 10-1-d(1)(b). Any that were so caused did not violate 10-1-d.

There was spirited argument about whether a monetary remedy could or should be awarded, in addition to the declaration of violation of 10-1-d(1)(a).

The Company argues that no employee lost any earnings in the nonnormal work-pattern schedules, since all worked and were paid for five days. It contends, therefore, that no monetary relief should be awarded.

The Union notes the Company plea that some, at least, of these split schedules were necessary in order to avoid overtime. It claims, therefore, that if such scheduling was a violation of the agreement, overtime rates as for a sixth day, should be paid as monetary relief, since such rates would have been necessary even

according to Management's reasoning, if 10-1-d(1) had been complied with. It is said that would be the only reasonable remedy for this wrong.

There is considerable attraction in that argument, as a matter of intellectual consistency. But these problems arose and were being faced in the early days of arranging Mobile Maintenance Services schedules, in accommodation to the practical needs of the operating departments, and it was less than certain how all that would and could be done under the strictures of the Agreement. Indeed, the Union argued on another point that these schedules were experimental in nature, and it is far from clear that these were deliberate, provocative decisions. Accordingly, at this early stage, it will be sufficient to declare the scope of rights and duties under the Agreement. Should like schedules be posted in the future for like reasons, in violation of Article 10, the grievance procedure, and arbitration, if necessary, will be available for corrective action, which surely would include monetary relief.

**AWARD**

The grievance is sustained to the extent stated in the accompanying Opinion.